Decision 01-09-013 September 6, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The application of SAN DIEGO GAS & ELECTRIC (U 902 E) for approval of servicing agreement between the State of California Department of Water Resources ("DWR") and SDG&E Company Pursuant to Chapter 4 of the Statutes of 2001 (Assembly Bill 1 of the First 2001-2002 Extraordinary Session).	Application 01-06-039 (Filed June 22, 2001)

OPINION APPROVING THE SERVICING AGREEMENT BETWEEN SAN DIEGO GAS & ELECTRIC COMPANY AND CALIFORNIA DEPARTMENT OF WATER RESOURCES

Summary

In January of this year, in response to the energy crisis facing California, the Legislature gave the California Department of Water Resources (DWR) the authority to purchase electricity and sell it to retail customers of California electric utilities. This authority was provided in Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB1X).

In March 2001, the Commission ordered San Diego Gas & Electric Company (SDG&E) to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (Decision (D.) 01-03-081.) This arrangement now needs to be set out with more detail and specificity. The State Treasurer and the Administration have asked the Commission to approve the servicing agreements so the financial community can review those agreements as part of their evaluation of the bond transaction that

is currently being undertaken by the Administration and the State Treasurer, so that they can understand DWR's financial situation.

Today we approve the servicing agreement between SDG&E and DWR, with certain minor changes. This agreement sets forth the terms and conditions under which SDG&E will provide transmission and distribution of DWR-purchased electricity, as well as billing, collection and related services. In return, DWR will pay SDG&E's incremental costs. The provisions contained here establish reasonable formal payment arrangements and will help ensure that SDG&E and DWR can continue providing safe reliable electric service to SDG&E's ratepayers.

Our approval of the servicing agreement is an essential step to the successful sale of the electricity bond issue being prepared by the State Treasurer and the Administration according to a letter dated July 2, 2001 to Commissioner Loretta Lynch, from DWR, the California Department of Finance, and the State Treasurer's Office. (Attached as Appendix B.)

Background Of This Proceeding

On June 22, 2001, SDG&E filed an application requesting Commission approval of the servicing agreement entered into between DWR and SDG&E on June 20, 2001. The servicing agreement sets forth the terms under which SDG&E will provide for the transmission and distribution of DWR power, as well as billing and related services as the agent for DWR. A copy of the servicing agreement, as executed, is attached to this decision as Appendix A.

On June 26, 2001, the Chief Administrative Law Judge (ALJ) issued a ruling that ordered that comments and protests on SDG&E's application be filed by June 29, 2001 and that SDG&E file its reply by July 2, 2001. The ruling also stated that the servicing agreement formalizes provisions necessary for the

critical role that DWR plays in meeting the electrical needs of SDG&E's customers and for DWR's bond financing.

On June 28, The Utility Reform Network (TURN), the Federal Executive Agencies (FEA), and Aglet Consumer Alliance (Aglet) filed separate protests to SDG&E's application. SDG&E filed a timely response to the protests.

On July 5, the Chief ALJ issued a ruling allowing interested parties to file supplemental protests, supplemental reply comments, or a response to SDG&E's application by July 12, 2001. The ruling was made in response to the July 2, 2001 letter to Commissioner Lynch from the DWR, the California Department of Finance, and the State Treasurer requesting that the Commission postpone action on certain items related to the issuance of the DWR's power supply revenue bonds until mid-August, after the effective date of legislation providing for expedited judicial review of Commission orders implementing AB1X. This decision is one of the items that was postponed in response to that letter. The Chief ALJ's ruling also recognized that parties were initially given a short time period in which to file protests and responses regarding SDG&E's application.

NewPower Company (NewPower) filed a timely supplemental response to the ALJ ruling.

Creation Of The Servicing Agreement

California has experienced an electricity crisis of immense magnitude. When AB1X was enacted, SDG&E and other investor-owned utilities were unable to convince sellers that they were financially able to purchase electricity on the wholesale market for their customers, resulting in serious concerns about reliability. AB1X authorized DWR to provide electricity to customers of investor-owned utilities to meet those concerns. An integral part of the statute's scheme are provisions allowing DWR to contract with electrical corporations to transmit

and distribute that power to retail end-use electric customers, and to provide billing, collection, and other related services as an agent of DWR on terms and conditions that reasonably compensate the utility for its services. The servicing agreement embodies those terms and conditions that DWR and SDG&E have agreed to.

The servicing agreement, among other things, provides a detailed methodology for the remittance of revenues to DWR. This methodology revises and expands upon the methods for the utilities to transfer revenues to DWR as set forth in D.01-03-081.

The servicing agreement contains a variety of provisions. It provides for the transmission and delivery by SDG&E of power procured by DWR (Section 2.1),[1] as well as the furnishing of metering services, meter reading services, and billing services by SDG&E to DWR (Section 3.1). The servicing agreement addresses how DWR charges shall appear on customer's billings, and how customers shall be notified in the event of changes to the DWR charges (Service Attachment 1, Sections 2.2 and 2.6).

The servicing agreement establishes various fees and charges that DWR will pay to SDG&E to cover the utility's costs of establishing procedures, systems, and mechanisms to perform necessary billing and services and to perform those services on an ongoing basis. (Section 7, Section 2.3 of Service Attachment 1, and Attachment G). The servicing agreement provides that SDG&E will be paid its incremental costs. The servicing agreement enables the Commission to adjust SDG&E's rates to avoid double recovery of any costs paid

[1] The "Section" references are to the servicing agreement and the "Attachment" references are to the attachments to the servicing agreement.

by DWR which have already been included in SDG&E's rates (Section 7.1). Furthermore, the Commission has jurisdiction to resolve disputes between SDG&E and DWR concerning the reasonableness of costs charged to DWR (Service Attachment 1, Section 2.3).

The servicing agreement also establishes data and communication procedures between DWR and SDG&E concerning customer usage, utility-retained generation, and energy trade schedules so that DWR can make accurate electricity purchases (Section 2.2). The servicing agreement includes a methodology for SDG&E to segregate, hold in trust, and remit to DWR revenues from the sale of DWR power to customers (Section 4.2). The remittance methodology specifies how payments are to be processed from SDG&E to DWR, addressing such details as uncollectible balances, reconciliation payments made or due according to the Restated Letter Agreement, and management of partial payments by customers (Attachment B). The servicing agreement also addresses any adjustments associated with the "20/20 program" established by Governor Davis' Executive Order, D-30-01, dated March 13, 2001 (Section 4.3).

Finally, the servicing agreement includes other provisions such as the consequences of default by either SDG&E or DWR (Section 5), confidentiality of information belonging to SDG&E's customers, SDG&E or DWR (Section 6), retention of and access to SDG&E records, and audit rights for DWR and the State of California Bureau of State Audits (Section 8). SDG&E will provide annual reports to DWR and the Commission (Section 8). The servicing agreement also addresses various other matters.

We conclude that the provisions contained in the servicing agreement properly enable the issuance of bonds developed and structured by the State Treasurer and the Administration. DWR is now selling electricity to customers

in SDG&E's service territory because SDG&E is not supplying 100% of the load requirements in its territory. As long as DWR performs this purchasing function, mechanisms must be in place to ensure that DWR's electricity is transmitted and distributed to these customers. In addition, a detailed description of how SDG&E will fulfill its role as a collection agent is appropriate. We also believe it is appropriate for SDG&E to provide us with the same information it provides DWR, and we will order it to do so.

The provisions of the servicing agreement relating to transmission and distribution are reasonable because they provide for SDG&E to transmit and distribute DWR's electricity at no additional charge to the utility or to end-use customers, as SDG&E already records in rates amounts for transmission and distribution and there is no change in costs for handling DWR's power. Meter reading and other necessary revenue cycle services in SDG&E's service territory are also provided appropriately. We endorse the remittance methodology contained in the servicing agreement because it clearly establishes that SDG&E is acting as a collection agent for DWR. Provisions allowing SDG&E to reduce remittances to DWR for the already-tariffed 20/20 program adopt a reasonable approach to meeting DWR's requirement to pay these costs. As we discussed above, we believe that the incremental method of determining SDG&E's costs is appropriate, especially as we may prevent double-recovery by adjusting SDG&E's rates.

However, we will revise certain details of the servicing agreement. We eliminate the requirement for a separate line item for DWR charges on customers' bills, as we believe this will cause undue customer confusion. In addition, we will change the provisions concerning dual billing service. Water Code §80106 authorizes DWR to contract "with the related electrical corporation

or its successor" for billing services. We respect the Legislature's judgement and do not believe it is cost effective to provide for separate billing by DWR, especially when this Commission maintains the authority to ensure that utilities comply with the servicing agreement provisions. The Commission is able to ensure compliance with its orders because of monetary and criminal penalties if the utility or its officers refuse to comply with a Commission decision.

The proposed rate agreement also requires us to ensure that SDG&E complies with this order and we intend to meet those obligations. Furthermore, we retain the ability to reconsider those modifications at a future date if needed. For example, while we see no need for dual billing now, we retain discretion to adopt a different result in a different fact situation. We also modify Section 1 and Section 2 of Attachment E to clarify that our approval of the servicing agreement is not an endorsement of the Restated Letter Agreement or of the Memorandum of Understanding (MOU) referenced in the servicing agreement.

Discussion of Issues Raised by Parties

Parties raise several concerns about the servicing agreement. TURN raises concerns with the "utilities fees" described in Section 7.1 of the servicing agreement and the "fee schedule" included as Attachment G to the application. SDG&E estimates set-up costs of $866,500 and $132,000 in annual recurring costs. Both costs are to be recovered through fees paid by DWR to SDG&E. Attachment G to the application does not provide a breakdown of these estimated costs between capital and operating and maintenance (O&M). To the extent that the majority of start-up costs cover the capital costs incurred by SDG&E under the servicing agreement, TURN requests these costs be treated as contributions in aid of construction (CIAC) or afforded similar ratemaking

treatment. TURN contends that failure to do so would put SDG&E ratepayers at risk of paying depreciation expense and return on capital investment for which the cost was already recovered from fees paid by DWR to SDG&E.

Conceptually, SDG&E agrees that any incremental costs that would normally be capitalized, but that are recovered from DWR pursuant to the servicing agreement, should be excluded from plant in service. SDG&E is amenable to the condition TURN proposes, but believes that the language in the servicing agreement does not require such a condition.

Attachment G of the servicing agreement specifies the implementation and administrative costs associated with providing billing services to DWR. The Commission must ensure that customers will not be burdened with paying for billing services already paid for by DWR. TURN's recommendation is reasonable. We will therefore require that the costs associated with such services be treated as CIAC or afforded similar ratemaking treatment, and not as plant in service, to prevent customers from double paying fees already paid to SDG&E by DWR. Our determination of this issue does not require a change to the servicing agreement.

TURN and FEA both raise concerns with the MOU that SDG&E reached with DWR on June 18, 2001 as referenced in Attachment E. TURN and FEA contend that as of the date the comments to the servicing agreement were filed, neither document described in Attachment E had been presented to the Commission, and therefore parties have not had an opportunity to comment on those documents. If the Commission approves the servicing agreement, TURN and FEA recommend that the Commission avoid any possible inference that its approval of the servicing agreement constitutes an approval of all, or even a part, of the MOU and the Restated Letter Agreement.

SDG&E explains that Section 14.10 states that the servicing agreement shall have no effect on the terms of any agreement between DWR and SDG&E referenced in Attachment E. While the MOU contemplates the need for Commission approval of a number of the MOU's aspects, SDG&E intends to make separate filings apart from this application to seek such approval.[2] SDG&E has no objection to FEA's and TURN's request.

We agree. Today's approval of the servicing agreement does not constitute in any way an approval of the MOU or the Restated Letter Agreement.

Attachment E to the servicing agreement contains several "Additional Provisions." Section 1 of Attachment E references and describes the Restated Letter Agreement between SDG&E and DWR dated June 18, 2001. Section 2 of Attachment E references and describes the MOU between SDG&E and DWR, which is also dated June 18, 2001. The language contained in these two sections of Attachment E should be revised to clarify that our approval of the servicing agreement does not prejudge, endorse or approve any component of the Restated Letter Agreement or of the MOU, and therefore that their provisions should not be enforceable through the servicing agreement. This revision is consistent with Section 14.10(a) of the servicing agreement, which provides that the parties' obligations under the servicing agreement shall be subject in all cases to the provisions of applicable law.

Aglet asserts that SDG&E's application lacks any discussion or testimony on the interaction between the servicing agreement with DWR and ratemaking for cost based rates. Aglet references Section 7.1 of the servicing agreement,

[2] On July 16, 2001, SDG&E filed several pleadings in various proceedings regarding the MOU. (See August 2, 2001 Assigned Commissioner's Ruling in A.00-10-045 and A.01-01-044.)

which recognizes the possibility of double recovery of utility costs and states the following:

> Utility acknowledges that the Commission may adjust, with notice to Utility and an opportunity for Utility to be heard, Utility's rates to avoid double recovery of any costs paid by DWR hereunder which have already been included in Utility's rates.

According to Aglet, double recovery could be avoided if the Commission approves the servicing agreement by providing an explicit protection in two ways. First, the Commission could spell out that DWR should reimburse SDG&E for embedded rather than incremental costs incurred by SDG&E for metering, meter reading and billing services and for responding to customer inquiries. Aglet contends that the "DWR charges"[3] should recover a fair share of utility meter costs and related customer service expenses. Second, until the Commission decides SDG&E's next general rate case, Aglet recommends that the electric distribution revenue requirement should be reduced to reflect the unbundling of embedded costs to the DWR charges. Currently, SDG&E recovers its revenue requirement through a performance based ratemaking (PBR) mechanism, which includes metering, meter reading, billing and customer service costs. Aglet states that such costs should be removed from the PBR revenue requirement to avoid double recovery.

SDG&E maintains that Aglet's proposal is not clear. If Aglet is proposing that SDG&E charge DWR the incremental costs of serving DWR plus a share of embedded costs and reduce its distribution rates by the amount of the embedded

[3] Aglet refers to the "DWR Rate Component," but such a component is not provided for in any of our AB1X implementing decisions. We assume Aglet means DWR charges. (See Section 1.28.)

costs allocated to DWR, then this will not deny SDG&E recovery of the total costs incurred to serve DWR and its customers. SDG&E remains opposed to this kind of proposal. However, if Aglet is proposing that SDG&E charge DWR incremental costs plus an allocated share of existing embedded costs and reduce its distribution rates by the full amount to be charged to DWR, SDG&E contends that it would not recover the incremental costs incurred to serve DWR.

SDG&E maintains that it is not reasonable to reduce its rates by the amount DWR would pay to SDG&E. SDG&E states that the fees described in Attachment G allow it to recover implementation system based costs that have not been anticipated and are not included in distribution rates. SDG&E contends that the charges in the servicing agreement reflect the increases in SDG&E's costs of providing services. They are not part of a pre-authorized amount that would be incurred regardless to serve customers.

Separating embedded costs between DWR and SDG&E would be time-consuming and laborious, and we are convinced that the resulting cost accounting benefits would be negligible at best. The embedded costs of certain services remain the same whether SDG&E provides that service to DWR or not. For example, SDG&E's metering and meter reading costs do not change at all whether SDG&E bills for DWR power or not. Furthermore, the transmission and distribution services, which SDG&E will provide DWR under the servicing agreement, are already included in SDG&E's rates. There is little to be gained by creating separate categories of costs, one subject to PBR and the other not, when the PBR mechanism is intended to provide mutual benefits to customers and utility shareholders regardless of which entity is purchasing or generating the electricity. Aglet acknowledges that the assignment of embedded costs to either DWR charges or SDG&E rates might not change the overall rates for bundled

service. Therefore, we will not reduce SDG&E's authorized electric distribution revenue requirement to reflect the unbundling of embedded costs to the DWR charges as Aglet suggests.

Even if implemented, Aglet's recommendations address a limited-term situation. DWR's authority was an emergency measure designed to stabilize a crisis. (Water Code §§ 80000 and 80003.) Under the transaction currently being undertaken by the State Treasurer and the Administration, DWR must continue to sell electricity for the life of the bonds. However, AB1X appears to contemplate that the utilities will resume the responsibility of purchasing electricity for their customers. (See Water Code § 80260.) Given that DWR's role as a power purchaser may change in the long term, so long as the bonds are not affected, the benefits of Aglet's recommendations would be of limited value.

However, Aglet raises an important issue regarding the potential to overestimate incremental costs. We will order subsequent proceedings to review the costs SDG&E will charge DWR, and to determine if those costs are reasonable. In doing so, we are not reviewing the reasonableness of DWR's requests for service from the utility, but the reasonableness of the utility's behavior in responding to that request. If we find that the expenses are unreasonable in any part, we will require the utility to reduce its bill to DWR to eliminate any unreasonable expense.

We acknowledge that there is the potential that the costs SDG&E will recover from DWR will be greater than incremental costs that are already included in SDG&E's rates. Indeed the servicing agreement provides that the

Commission may adjust SDG&E's rates to avoid double-recovery.[4] Accordingly, any concerns can be addressed in SDG&E's next General Rate Case.

Another party, NewPower, states that the servicing agreements for all three utilities are ambiguous as to whether a utility default is required for DWR to switch to non-utility revenue cycle service providers. NewPower suggests that DWR may want to procure billing and metering services from non-utility suppliers in order to obtain potential gains in functionality or efficiency but would forego these benefits if the Commission permits the utilities to provide DWR these services at only a nominal fee. NewPower recommends that the Commission direct the utilities to provide revenue cycle services to DWR under the servicing agreement at exactly the same Commission-approved rates that the utilities charge non-utility electric service providers (ESPs) for such services.

The servicing agreements are not ambiguous. DWR can switch to non-utility revenue cycle service providers only if SDG&E defaults on the servicing agreement. (See Section 3.2 and Section 5.3 (a) (ii).) In any event, we will modify the agreement so that DWR may not adopt a dual billing service. Moreover, it is not reasonable to charge DWR the same rates that the utilities charge ESPs for revenue cycle services. DWR is providing electricity to all retail end-use customers in SDG&E's service territory, while ESPs provide electricity to only a limited number of customers. The fees paid by DWR to SDG&E are based on lump sum costs provided in Attachment G of the servicing agreement, while the

[4] Section 7.1 of the servicing agreement states: "Utility acknowledges that the Commission may adjust, with notice to Utility and an opportunity for Utility to be heard, Utility's rates to avoid double-recovery of any costs paid by DWR hereunder which have already been included in Utility's rates."

rates paid by ESPs to SDG&E are based on a methodology adopted in D.98-09-070.

Water Code § 80106 states:

> "(a) The department may contract with the related electrical corporation or its successor in the performance of related service, for the electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services.
>
> (b) At the request of the department, the commission shall order the related electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services."

The law speaks only of electrical corporations or their successors as the providers of billing, collection and other revenue cycle services to DWR. The legislation is specific in mentioning reasonable compensation to electrical corporations for the services provided, and the legislation contains no reference to other entities such as ESPs providing such services. It is clear that the intent of the legislation is to ensure that SDG&E is reasonably compensated for the services it provides, rather than to ensure that other providers of revenue cycle services have an opportunity to compete with SDG&E. DWR's current role in providing electricity should cause the least possible increase in the total cost that electric end-use customers pay for billing and related services. Accordingly, we do not agree with NewPower's recommendation to direct the utilities to provide

revenue cycle services to DWR at a higher level than the incremental cost provided in the servicing agreement.

In addition to addressing the concerns raised by the commenters, we also address one other point in the servicing agreement that we mentioned earlier. Section 2.2 of Service Attachment 1 deals with the presentation of DWR charges on utility bills. Subdivision (a) of that section provides for a separate line item for DWR charges on all utility bills.[5] We believe this is undesirable. Electricity bills are already complex and adding a separate line item for DWR will only increase this complexity. Increasingly complex bills are likely to cause customer confusion, and may well dilute the energy conservation message we are trying to convey by the way in which tiered rates are shown on customers' bills. Accordingly, subdivision (a) of Section 2.2 of Service Attachment 1 should be revised to read as follows: "DWR charges shall appear on all Consolidated Utility Bills in the manner and at the time required by Applicable Law and Applicable Tariffs." While DWR charges will not be separately stated on customers' bills, the utility's internal accounting will account separately for DWR charges, so that the utility properly segregates the money it receives on behalf of DWR as DWR's agent from all other monies it received.[6] This revision is limited solely to subdivision (a) of Section 2.2 of Service Attachment 1 and is in no way intended to alter or amend any other provision thereof or of the servicing agreement or the parties' respective duties or obligations thereunder.

[5] There is a provision that allows the Commission to order otherwise.

[6] Today's decision specifically orders the utility to maintain internal accounting records and to provide the necessary information to DWR.

The City of San Diego asks us to modify the servicing agreement to include a clear, express, and unconditional obligation of DWR to pay franchise fees. We decline to do so. This issue is outside the scope of this decision. This decision adopts a servicing agreement, which details the obligations of SDG&E to transmit, deliver, bill, and collect for DWR power and the obligation of DWR to pay SDG&E's incremental costs of providing these services. The servicing agreement addresses the issue of franchise fees only to the extent necessary to ensure that the utility is able to recover its incremental costs from DWR, as authorized by Water Code section 80106. (See section 7.3(b) of the servicing agreement.) Any other issues dealing with franchise fees are beyond the scope of what is before us today.

Conclusion

The servicing agreement between SDG&E and DWR is permitted under Water Code § 80106. We have reviewed all of the various provisions contained in the servicing agreement, including those addressed in comments and protests, and have determined that the servicing agreement is reasonable, with the changes we are adopting in this decision. Pursuant to Water Code §§ 80016 and 80106, we approve the servicing agreement attached to this decision with the revisions described herein. We also conclude that the servicing agreement between SDG&E and DWR is necessary to enable the issuance of the bonds developed and structured by the State Treasurer and the Administration as authorized in Water Code § 80130.

Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB1X. Therefore, Public Utilities Code §1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public

Utilities Code §1768 (procedures for judicial review) are applicable (See Stats. 2001-2002, First Extraordinary Session, Ch. 9.) (AB31X).

Comments on Draft Decision

Public Utilities Code Section 311(g)(1) generally requires that the Commission's draft decision be served on all parties, and subject to at least 30 days of public review and comment prior to a vote of the Commission. The time for filing comments to the draft decision was shortened pursuant to Rule 77.7(f). The City of San Diego and DWR submitted comments to the draft decision. We have considered those comments and have made the changes we deem appropriate to the decision.

Findings of Fact

1. On June 22, 2001, SDG&E filed an application requesting that the Commission approve the servicing agreement that was entered into between DWR and SDG&E.

2. The servicing agreement provides a detailed methodology for the remittance of revenues to DWR, and revises and expands upon the methods set forth in D.01-03-081.

3. The servicing agreement establishes various fees and charges that DWR shall pay to SDG&E to cover the utility's incremental costs of establishing necessary procedures, systems and mechanisms, and performing its services.

4. The servicing agreement enables the Commission to adjust SDG&E's rate to avoid double recovery of any costs paid by DWR which have already been included in SDG&E's rate.

5. The servicing agreement establishes data and communication procedures between DWR and PG&E concerning customer usage, utility-retained generation, and energy trade schedules.

6. DWR is selling electricity to customers in SDG&E's service territory because SDG&E is unable to supply the entire load for its service territory.

7. In order for DWR to perform its purchasing function, mechanisms must be in place to ensure that DWR's electricity is transmitted and distributed to these customers.

8. The remittance methodology in the servicing agreement establishes that SDG&E is acting as DWR's collection agent.

9. A separate line item for DWR charges is likely to cause customer confusion.

10. Water Code §80106 only authorizes DWR to contract with the utility or its successor for billing services.

11. Separate billing by DWR is not cost effective.

12. The Commission has the authority and the tools necessary to ensure compliance by the utilities with the servicing agreement provisions.

13. The rate agreement decision requires the Commission to ensure that SDG&E complies with this order.

14. TURN believes that the capital start up costs described in Section 7.1 of the servicing agreement and Attachment G of the servicing agreement should be treated as CIAC or afforded similar ratemaking treatment.

15. The Commission should avoid any inference that the approval of the servicing agreement constitutes an approval of all, or even a part, of the MOU.

16. To protect against double recovery of utility costs, Aglet proposes that DWR reimburse SDG&E for the embedded costs of certain services rather than incremental costs.

17. Separating embedded costs between DWR and SDG&E would be time-consuming and laborious, and would result in cost accounting benefits that are negligible.

18. The embedded costs of certain services remain the same whether SDG&E provides that service to DWR or not.

19. Aglet acknowledges that the assignment of embedded costs to either the DWR charges or SDG&E's rate might not change the overall rates for bundled service.

20. NewPower contends that it is unclear whether a utility default is required before DWR can use a non-utility revenue cycle service provider.

21. DWR can only switch to a non-utility revenue cycle service provider if SDG&E defaults on the servicing agreement.

22. DWR is providing electricity to all retail end-use customers in SDG&E's service territory, while ESPs provide electricity to only a limited number of customers.

23. The fees paid by DWR to SDG&E are based on lump sum costs provided for in the servicing agreement, while the rates paid by ESPs to SDG&E are based on the methodology adopted in D.98-09-070.

24. Existing law only refers to electrical corporations or their successors as the providers of billing, collection and other revenue cycle services for DWR.

25. DWR's role in providing electricity should cause the least possible increase in the total cost that electric end-use customers pay for billing and related services.

26. The public interest in approving the servicing agreement between SDG&E and DWR in time to facilitate the bond issuance clearly outweighs the public interest in having a full 30-day comment period.

Conclusions of Law

1. The Commission has the jurisdiction to resolve disputes between SDG&E and DWR concerning the reasonableness of costs charged to DWR.

2. SDG&E shall provide the Commission with the data it supplies to DWR concerning customer usage, utility-retained generation, and electric trade schedules.

3. The servicing agreement's requirement of a separate line item for DWR charges should be eliminated.

4. The provisions concerning dual billing should be deleted from the servicing agreement because it is too costly and unnecessary given the Commission's broad enforcement powers over regulated utilities.

5. Capital start up costs should be treated as CIAC or afforded similar ratemaking treatment.

6. Sections 1 and 2 of Attachment E of the servicing agreement should be revised to reflect that the approval of the servicing agreement does not prejudge, endorse or approve any component of the Restated Letter Agreement or of the MOU.

7. The Commission should establish a subsequent procedure to review the reasonableness of the incremental costs that SDG&E charges DWR.

8. Concerns about double recovery can be addressed in SDG&E's next General Rate Case.

9. NewPower's recommendation to direct the utilities to provide revenue cycle services to DWR at a higher level than the incremental cost provided in the servicing agreement should not be adopted.

10. The servicing agreement between DWR and SDG&E is approved, subject to the revisions described in this decision.

11. The servicing agreement between DWR and SDG&E is necessary to enable the issuance of the bonds as authorized in Water Code §80130.

12. This decision construes, applies, implements, and interprets the provisions of AB1X.

O R D E R

IT IS ORDERED that:

1. The servicing agreement that was executed between the California Department of Water Resources (DWR) and San Diego Gas & Electric (SDG&E), attached as Appendix A of this decision, is approved, with the revisions contained in Ordering Paragraphs 3, 4 and 5.

2. The $866,500 in capital start-up costs for SDG&E shall be treated as contributions in aid of construction or afforded similar rate making treatment.

3. The "Dual Billing Service" references in the servicing agreement shall be revised as follows:

   a. Section 1.9 shall be revised to read as follows: "Billing Services – means Consolidated Utility Billing Service."

   b. Sections 1.26, 1.27 and 3.2 shall be deleted.

   c. The last sentence in Section 3.4, beginning with the words "Upon any election…," shall be deleted.

   d. Subdivision (a) of Section 5.3 shall be revised to delete sub-section (ii), and sub-section (iii) shall be renumbered as sub-section (ii).

   e. Subdivision (b) of Section 5.3 shall be deleted.

4. Subdivision (a) of Section 2.2 of Service Attachment 1 shall be replaced in its entirety with the following: "DWR charges shall appear on all Consolidated Utility Bills in the manner and at the time required by Applicable Law and Applicable Tariffs."

5. Attachment E of the Servicing Agreement shall be revised as follows:

   a. The following language shall be added to the end of Section 1:

   "The reference to the Restated Letter Agreement in this Attachment E provides no independent basis for enforcement of the Restated Letter Agreement."

   b. The following language shall be added to the end of Section 2:

   "The reference to the MOU in this Attachment E provides no independent basis for enforcement of the MOU."

6. SDG&E shall provide to the Director of the Energy Division all information transmitted to and received from DWR pertaining to utility-retained generation, and all information transmitted to and received from DWR pursuant to the Servicing Agreement pertaining to customer usage information and electric trade schedules.

   a. This information shall be transmitted on a weekly basis, or on a more frequent basis if directed by the Director of the Energy Division.

7. SDG&E shall provide upon request by DWR, such additional information as may be reasonably necessary for DWR, at any point in time, to determine on a customer-by-customer basis the amount of DWR charges that have been billed to, or that have accrued with respect to, retail end use customers in the utility's service area.

   a. SDG&E shall also maintain internal accounting records which identify, on a daily basis, the amounts to be remitted to DWR from each customer.

8. Within 20 days of the date of this decision, SDG&E shall file and serve in this docket, a motion seeking approval of the basis on which the incremental costs contained in the servicing agreement and charged to DWR were calculated.

   a. DWR shall provide a written response as to whether it is DWR's view that SDG&E's incremental costs are reasonable.

This order is effective today.

Dated September 6, 2001 at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I dissent.

HENRY M. DUQUE
Commissioner

I dissent.

RICHARD A. BILAS
Commissioner

(APPENDICES A & B)

http://www.cpuc.ca.gov/PUBLISHED/REPORT/9336.PDF